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SUBJECT: WTO SERVICES NEGOTIATIONS - FEBRUARY 7-25, 2005

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**11.** (U) Summary: The WTO services three week "mega cluster" took place in Geneva, February 7- 25, 2005. The meetings focused on preparations for revised offers indicatively due May 2005 with many "friends" groups presenting sector-specific proposals aimed at eliciting market access commitments in these areas. Chairman Jara repeated the same concerns he raised at the TNC about the poor state of play for services negotiations. Jara expressed concern that much work had to be done between now and Hong Kong. The U.S. and other developed countries encouraged members to submit initial offers and stressed the importance of meeting the May 2005 deadline for submission of revised offers. The U.S. met bilaterally with 34 Members (see para 13) and participated in multiple friends groups (see para 14) to advance market access negotiations. Members doggedly stressed the importance of Mode 4 (movement of natural persons) and emphasized that without additional Mode 4 market access from the U.S., the negotiations will not move forward. A half-day informal session devoted to Mode 4. The Council for Trade in Services' (CTS) MFN Exemption Review continued. The U.S. tabled a well-received proposal on horizontal transparency disciplines in the Working Party on Domestic Regulations. Other working parties, including Working Party on GATS Rules, Committee on Specific Commitments, and the Committee on Trade in Financial Services also met. The Special Session Chair proposed benchmarks to assess progress in the services negotiations and considered for the December WTO Hong Kong Ministerial. The next cluster will not convene until late June to allow time to prepare revise offers by the May deadline. End Summary.

COUNCIL FOR TRADE IN SERVICES SPECIAL SESSION (CTSSS)

**12.** (SBU) Assessment: Members responded to the WTO Secretariat's presentation on services assessment based on their

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recent trade report. The report underscored the benefits of liberalizing infrastructure services, such as transportation, telecommunications and financial services. Developing countries such as Pakistan, Uganda, Senegal and Nigeria noted the benefits they have reaped from telecommunications liberalization. Responding to some members, including South Africa and the Philippines', continued insistence that they need a methodology for assessment in order to prepare an initial offer, the Chair reminded members that much assessment work has to be done on a case-by-case basis and that this has been done. Hong Kong, the EC and others urged members to apply what they have learned about the benefits of services liberalization to develop initial offers.

**13.** (SBU) State of Play: Chairman Jara repeated the same concerns he raised at the TNC about the poor state of play for services negotiations. He expressed concern that much work had to be done between now and Hong Kong. Namely, he said more initial offers had to be tabled; May revised offers had to demonstrate improvements; the importance of services trade commitments must be raised at all levels with Ministers, including mini-Ministerials; and, that some work had to be done on how to organize, including parallel work on rules and domestic regulations. Indonesia, Barbados and Uganda announced that they would be tabling offers in the coming days. (Comment: Shortly after the cluster, Guyana and Grenada also tabled initial offers. End Comment). The Chairman also recognized that while rules work required further examination, proposals tabled on domestic regulations revealed that a package could emerge that would yield some promising results by Hong Kong. He said that his plan for the next cluster was to hold a session for LDCs to enable them to voice their interests and discuss how to enhance their participation in the request/offer process. He applauded the informal Mode 4 discussions and he may decide to hold further Mode 4 consultations as well as consultations on other issues, such as cross border supply - Mode 1. The Chair, noting several Members' interest in informal intersessional meetings to advance Domestic Regulation work, coordinate inputs from friends groups, and move market access proposals, suspended meetings until April 27, rather than closing the Special Session. Ambassadors for the U.S., India, Hong Kong, EC, Mexico, Uganda, Zambia, Peru, and

Singapore made strong statements of support for the negotiations.

14. (SBU) Chairman Jara informally introduced the Secretariat's thinking on how to examine offers. The Secretariat presentation examined offers in the context of Uruguay Round commitments, highlighting the developed countries' already extensive commitments compared to developing countries very limited commitments. The paper then continued to examine where Members should be with regard to existing liberalization and possible thinking on a benchmark to measure improvements.

15. (SBU) Several negotiating proposals and friends group statements were tabled and preliminarily discussed in the Special Session. On telecommunications, the EC tabled a paper without notice to Telecom Friends, which appeared to undermine the U.S. position to preserve coverage of value added telecommunications services. Consequently, the U.S. introduced its own paper. Many other Friends groups, including Express Delivery Friends, Financial Services Friends, and Environmental Friends, introduced and/or discussed negotiating proposals. Some developing countries stressed the need for construction services commitments.

16. (SBU) Mode 4 (Temporary Entry): A special informal session of the Council for Trade in Services was devoted to discussion of Mode 4 issues. The Mode 4 discussions took a very polarizing tone, as Mode 4 demandeurs began to express their requests in the form of an ultimatum to developed countries, particularly to the U.S. The EC tabled a paper on Mode 4 common categories (co-sponsored by Canada, Bulgaria and Romania) and India tabled a competing paper (co-sponsored by Argentina, Chile, Colombia, Mexico, Peru, Philippines, Pakistan, Thailand and Uruguay) that went beyond categorization to stress specific market access elements. Chile, Colombia and Peru argued that while transparency for Mode 4, including common categories and definitions, was useful, market access was of higher importance. Indonesia, South Africa, Mexico, Brazil and China also stressed the importance of mode 4 for development. The EC ventured to say that the GATS was not limited by a particular skill level and that it shared the view that transparency was just a stepping stone to more mode 4 market access commitments. Developing countries focused on access for contract service providers and independent professionals (both without a wage parity requirement). Interventions from Australia, New Zealand and Korea cautioned Members that domestic immigration regimes had to be taken into account. Switzerland stressed the need for wage parity. The U.S. intervened to support the basic principles of transparency and uniformity in scheduling of Mode 4 commitments, but did not directly address market access issues.

17. (SBU) Least Developed Countries, including Uganda's Ambassador, stressed their need for commitments for unskilled workers. Uganda's Ambassador also said that developed countries' visa process was burdensome and too expensive and suggested that developed countries' return visa application fees when visas are denied. The New Zealand responded that unskilled and low-skilled labor was not within the GATS scope. Various developing countries stated that commitments in these areas would be the appropriate response to the development aspect of the negotiations.

#### MFN REVIEW

18. (SBU) The MFN exemption review mandate requires examination of whether the circumstances still exist for maintenance of each exemption and a determination of the date for the next review. Hong Kong China, China, Korea, Japan, Mexico and Chinese Taipei demanded that all MFN exemptions be eliminated and complained that not all of their questions from the last cluster had been addressed. These members also urged that the review continue to the next cluster. (Comment: Some of these proponents are targeting U.S. maritime related exemptions and seek to engage in protracted questions. End Comment.) The Chair decided to leave the items on the agenda for the next meeting and hold consultations on the question of outstanding responses and the last part of the mandate to determine the date for the next review.

#### SUBSIDIARY BODIES

19. (SBU) Working Party on Domestic Regulation (WPDR): Members further discussed Colombia's paper concerning alleged burdensome visa procedures. This paper is particularly controversial because it asserts that countries' immigration regimes, i.e. visas, are within the GATS scope and subject to GATS disciplines. Some developed countries, such as the U.S., EC, and Australia believe that visas are not included in the GATS scope. Mexico gave a detailed power point presentation on its domestic experience in administering general technical standards disciplines. Also, the U.S. and two groups of developing countries introduced papers and entertained preliminary reactions. The U.S. paper proposed horizontal regulatory disciplines on transparency; the India, Chile, Mexico and Thailand paper addressed horizontal disciplines on qualification requirements and procedures; and, the Philippines, Colombia, Brazil, Dominican Republic and Peru paper introduced a

comprehensive proposal for disciplines. The U.S. transparency proposal was well received and many delegations raised constructive questions including Brazil, India, and Colombia. (Comment: Horizontal transparency disciplines are a key U.S. objective for the DDA. The U.S. proposal covers all sectors and modes of supply, with the exception of specific concerns about entry authorizations (visas). End Comment).

10. (SBU) Working Party on GATS Rules (WPGR): The WPGR commenced with a constructive discussion of the U.S. paper on an information exchange on subsidies by sector. The U.S. stressed that the purpose of the paper was to provide some focus to the subsidies discussion rather than seek consensus on approach. While delegations had different views on where to begin the information exchange, most delegations welcomed the U.S. idea to focus on a few sectors at a time. Members continued to raise concerns with an EC government procurement proposal that suggests that market access and national treatment disciplines apply to GATS Art. XIII (government procurement). India, Malaysia and others argued that Art. XIII explicitly excludes market access and national treatment and if any area were covered, it would be transparency. However, India and Egypt suggested that since the Singapore Issue of Transparency in Government Procurement was "dropped" from the overall DDA, it seemed the same was the case for the Services mandate. The U.S. noted that it did not share India and Egypt's interpretation that transparency had dropped from the Services procurement mandate. Delegations further discussed an emergency safeguard mechanism (ESM), though no resolution surfaced. ESM opponents assert that there is insufficient data in services to make the necessary causal link to injury. Hong Kong China drew a comparison between Economic Needs Tests (ENTs) and ESMs and suggested that Members were being hypocritical in their ESM opposition. The U.S. disagreed with Hong Kong China that all ENTs served as ESMs and said that it was up to ESM proponents (ASEANS minus Singapore) to demonstrate how a multilateral emergency mechanism could be employed and enforced.

11. (SBU) Committee on Specific Commitments (CSC): Under the standing item on "scheduling issues," the Committee continued discussing Hong Kong China's and Chinese Taipei's general questions on ENTs and other areas. In informal mode, the Committee also discussed how to proceed on Brazil's request to discuss "technical" questions on offers in a multilateral forum. The EC suggested that it would hold an open-ended bilateral with all interested Members to answer all questions on their offer. The U.S. reiterated that it would continue to address questions on its offer bilaterally but that it was open to answering strictly "technical" questions about its offer in the CSC in informal mode. This way, developing countries with capacity constraints could come to the regularly scheduled CSC and take advantage of hearing responses to "technical" questions, determined as such by the U.S., in informal mode without frustrating the confidential nature of the request/offer process. The Chair will continue consulting on this matter.

12. (SBU) Council on Trade in Financial Services (CTFS): The CTFS highlight was the Friends of Financial Services presentation of the liberalization statement. The friends signaled that co-sponsors would be sought for the version to be tabled in the Special Session. Morocco, Antigua and Barbuda, and others spoke in general support of the concepts but stressed consideration of developing countries' special regulatory needs. The CTFS also noted that Brazil, Jamaica and the Philippines have not yet to accept the Fifth Protocol. Jamaica and Brazil explained that the delay was due to their domestic processes.

#### BILATERALS AND PLURILATERALS

13. (SBU) Bilaterals: The U.S. participated in over 34 bilaterals, meeting with all U.S. priority markets, except Venezuela. Bilateral meetings included: Argentina, Australia, China, Egypt, India, Israel, Nigeria, Uruguay, Tunisia, Pakistan, Sri Lanka, EC, Brazil, Korea, Japan, the African Group and LDCs, Kenya, South Africa, Switzerland, Norway, Malaysia, Indonesia, Philippines, New Zealand, Canada, Hong Kong, Turkey, Jamaica, Thailand, Mexico, and a Group of Gulf Countries (Oman, Bahrain, Kuwait, and UAE). Bilateral engagement had a higher level of focus on specific market access interests. In all bilaterals, the U.S. focused its market access request on the following key sectors: energy services, financial services, telecommunications, express delivery, environmental services, computer-related services and audiovisual services. The most disappointing bilateral was with the EC, which accused the U.S. of backtracking from its existing commitments and attacked the U.S. for not including Mode 4 in its initial offer. Hong Kong China expressed its interest in maritime and the elimination of MFN exemptions. South Africa and the Philippines still could not reassure the U.S. that they would soon table their much-sought initial offers, though they indicated that they had already prepared the offers.

14. (SBU) Friends Groups: The U.S. participated in approximately 10 friends group meetings. Friends group engagement was more refined and focused, responding to suggestions that the Friends groups should mobilize to advance the negotiations. Under U.S. leadership, Financial Services

friends (Canada, EC, Japan, Switzerland, Singapore, Norway, Australia, Bahrain, Panama, Oman and Chinese Taipei) succeeded in presenting a joint statement to promote the sector. Similar statements on logistics, legal, computer and related, telecom, postal/courier, and environmental services were also tabled. The U.S. also tabled a telecom classification proposal to counter an EC telecom classification paper. In addition, the U.S., Canada and Japan co-sponsored an Air Annex statement to counter an Australia, EC, Chile, New Zealand, Norway and Switzerland proposal that invited Members to schedule ground handling services commitments, which is outside the GATS' scope. Brazil and South Africa supported the U.S. position against the inclusion of ground handling services. Friends groups also organized seminars promoting liberalization in financial, maritime, and education services.

¶15. (SBU) LDC/Africa Group meeting: The U.S. met jointly with the African Group and LDCs. The U.S. highlighted the benefits of liberalizing infrastructure services, such as telecommunications, financial services, and energy services, and linked services liberalization to countries' various development goals. Drawing upon available data on trends in developing countries, the U.S. proposed ideas for requests and offers. Nigeria indicated that it was preparing an initial offer, which would include energy services and that it would like more technical assistance. Rwanda asked how the U.S. intended to address Mode 4, underscoring that many LDCs do not have resources to request anything beyond Mode 4. The U.S. responded by highlighting our current Mode 4 commitments, which are largely unmatched by most other countries and reminded the group of our political sensitivities. The U.S. also suggested that our transparency disciplines proposal attempted to respond to some developing country concerns in that it covers all modes of supply. The U.S. highlighted technical assistance work with the International Trade Centre, the WTO Secretariat and bilateral programs.

¶16. (SBU) APEC Caucus: Hong Kong China hosted an APEC Caucus meeting to discuss how to foster the GATS negotiations. Various members suggested that the Caucus do more in the area of assessment and transparency and Chile prompted Thailand to suggest work on licensing and qualification requirements. It was also suggested that the chair, Hong Kong, pursue APEC statements that maintain the importance of services negotiations in the Round.

¶17. (SBU) Quad-Jara meeting: Chairman Jara indicated that he had mixed views on the form of the "first approximation", though he believes that it will be important for Members to assess revised offers' for Hong Kong. The EC fears that Jara's talk of broad benchmarks might encourage Members to hold tabling their revised offers in May until a consensus is reached on a general benchmark. The U.S. shares the EC's concern, but supports Jara undertaking consultations in small groups to avoid services getting too behind the curve. Deily